



Decision and Reasons for Decision

Citation:	<i>3ZA9CH and Cairns and Hinterland Hospital and Health Service [2016] QICmr 39 (6 October 2016)</i>
Application Number:	312880
Applicant:	3ZA9CH
Respondent:	Cairns and Hinterland Hospital and Health Service
Decision Date:	6 October 2016
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - medical records - personal information of the applicant and other individuals provided or collected in the course of the applicant's medical treatment - whether disclosure would, on balance, be contrary to the public interest - whether access to information may be refused under section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Cairns and Hinterland Hospital and Health Service (**CHHHS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information contained within his medical records.
2. CHHHS did not make a decision within the timeframe prescribed in the IP Act and was therefore deemed to have refused access to all requested information.
3. CHHHS nevertheless released a large amount of information to the applicant¹ as follows:
 - released 2196 pages in full
 - granted access² to 48 pages in full³ to the applicant's nominated healthcare professional

¹ By way of a purported decision dated 24 June 2016.

² Under section 92(2) of the IP Act.

³ CHHHS' purported decision letter dated 24 June 2016 contained an error in that it stated that access to 53 pages was to be given to the applicant's nominated healthcare professional. The correct number of pages released to the nominated healthcare professional is 48, the other five pages being those which were refused in full, which the purported decision letter did not state.

- refused access to five pages in full⁴ and parts of 172 pages on the basis disclosure was, on balance, contrary to the public interest;⁵ and
 - refused access to certain information on the basis it is unlocatable.⁶
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of CHHHS' decision and remaining in issue,⁷ are the five full pages of the applicant's medical record to which access was refused.
 5. For the reasons set out below, I vary CHHHS' decision and refuse access to five full pages of information within the applicant's medical record under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

Background

6. Significant procedural steps are set out in the Appendix.

Reviewable decision

7. The decision under review is the deemed decision CHHHS is taken to have made under section 66(1) of the IP Act.

Evidence considered

8. The evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

Information in Issue

9. The information remaining in issue comprises five pages of the applicant's medical record. The information on these pages may broadly be described as personal information of the applicant and third parties collected and recorded as part of the applicant's contact with and treatment by CHHHS mental health services.

Issue for determination

10. The issue for determination in this review is whether disclosure of the information in issue would, on balance, be contrary to the public interest.

Relevant law

11. Under the IP Act, an individual has a right to access documents of an agency to the extent that they contain the individual's personal information.⁸ However, this right of access is subject to some limitations, including the grounds for refusal of access.
12. Relevantly, an agency may refuse access to information where its disclosure would,

⁴ See footnote 3.

⁵ Sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67 of the IP Act provides that an agency may refuse access to a document of an agency in the same way and to the same extent the agency could refuse access to the document under the RTI Act, section 47 were the document to be the subject of an access application under that Act.

⁶ Section 52(1)(b) of the RTI Act.

⁷ The applicant advised OIC in a telephone conversation on 14 July 2016 that he did not seek to access those parts of information refused in 172 pages of his medical record nor did he seek to access the information CHHHS was unable to locate. Also, CHHHS confirmed to OIC by email dated 21 July 2016 that it had by letter that day released a copy of the 48 pages to the applicant's nominated healthcare professional.

⁸ Section 40 of the IP Act.

on balance, be contrary to the public interest.⁹ The term 'public interest' refers to considerations affecting the good order and functioning of the community and governmental affairs, for the well-being of citizens generally. This means that, ordinarily, a 'public interest' consideration is one which is common to all members, or a substantial segment, of the community distinct from matters that concern purely private or personal interests. However, in some circumstances public interest considerations can apply for the benefit of an individual.

13. In deciding whether disclosure would, on balance, be contrary to the public interest, the RTI Act requires a decision-maker to:
 - identify any irrelevant factors and disregard them;
 - identify relevant public interest factors favouring disclosure and nondisclosure;
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosing the information would, on balance, be contrary to the public interest.¹⁰
14. Schedule 4 of the RTI Act contains non-exhaustive lists of various factors that may be relevant in determining the balance of the public interest.

Findings

Assessment of public interest factors

15. No irrelevant factors arise in the circumstances of this case and I have not taken any into account. I examine below the relevant factors favouring disclosure and nondisclosure of the information in issue.

Factors favouring disclosure

16. The RTI Act recognises that there is a public interest factor favouring disclosure of the information in issue to the applicant as it contains information about him.¹¹ In addition, disclosing the information may enable the applicant to understand why some actions were taken by CHHHS regarding his treatment.¹² For these reasons, I attribute significant weight to these two factors favouring disclosure.
17. The applicant's submissions to OIC¹³ also raise a further factor favouring disclosure relating to whether disclosure could reasonably be expected to reveal misconduct on the part of an agency or an official.¹⁴ The applicant submits that he was mistreated by CHHHS and he seeks access to the information in issue to help him achieve justice. He contends that access will enable him to "*get to the bottom of what has happened, who is responsible and [sic] appropriate actions taken*".¹⁵ I acknowledge the applicant's concerns and note it is open to him to raise any health service complaints with the Office of the Health Ombudsman.¹⁶
18. The applicant received the overwhelming majority of his medical record - in excess of 2000 pages - and I have carefully reviewed the information contained within the five

⁹ Sections 47(3)(b) and 49 of the RTI Act.

¹⁰ Section 49(3) of the RTI Act.

¹¹ Schedule 4, part 2, item 7 of the RTI Act.

¹² Schedule 4, part 2, item 11 of the RTI Act.

¹³ Applicant's written submissions to OIC dated 20 July and 3 August 2016 and telephone conversation with OIC on 20 July 2016.

¹⁴ Schedule 4, part 3, item 6 of the RTI Act.

¹⁵ Applicant's written submissions to OIC dated 3 August 2016.

¹⁶ Information about making a health service complaint to the Office of the Health Ombudsman is accessible at <http://www.oho.qld.gov.au/>

pages remaining in issue. The IP Act constrains me from revealing its content¹⁷ but I am satisfied that while it contains the personal information of third parties in the context of the applicant's treatment and contact with CHHHS as described in paragraph 9 above, it does not indicate or reveal of itself any untoward treatment on the part of CHHHS or its staff. Given the considerable amount of information disclosed to the applicant in relation to his involvement with CHHHS and my assessment of the information remaining in issue, I do not consider that disclosure could reasonably be expected to reveal or substantiate that an agency or official had engaged in misconduct. On that basis, I do not consider that the factor applies.

Factors favouring nondisclosure

19. While there is a public interest in the applicant obtaining access to his personal information, the information in issue also contains personal information of other people as described in paragraph 9 above. Having reviewed the information in issue, I consider it was provided confidentially to CHHHS for the purpose of helping to determine appropriate treatment and care for the applicant by CHHHS staff.
20. In the circumstances, the following factors favouring nondisclosure apply:
 - protection of an individual's right to privacy¹⁸ and the public interest harm factor that arises when disclosing personal information of another person;¹⁹ and
 - protecting health care providers' ability to obtain confidential information from individuals in the circumstances of someone needing medical treatment.²⁰
21. I am satisfied that the information in issue is highly sensitive information provided in confidence in the course of the applicant's mental health treatment with the expectation that it would remain confidential. Health care workers often rely on information provided by others, including other health care workers, to assist in the treatment of health conditions. If disclosed under the RTI Act, it is reasonable to expect that individuals may be reluctant to provide information in the future that, in the assessment of the health care provider, is highly relevant to treatment decision making. In turn, this could prejudice a health care worker's ability to care for patients.
22. Given the sensitive and private nature of the information and the public interest in information of this type continuing to be provided freely by health care workers themselves and other members of the community in the future, I consider these three factors favouring nondisclosure attract significant weight.
23. The applicant submits that he may be aware of some of the information in issue given it involves his own treatment.²¹ Therefore, arguably the privacy interests attached to the information may be reduced. However, whilst the applicant believes he knows what the information may comprise, there is no material before me to indicate that the personal information of third parties is, in fact, known to the applicant. In any event, the information in issue is highly sensitive and the applicant's purported knowledge of it would not, in my view, reduce the privacy interests of the third parties in this case. Health care workers charged with patient care are entitled to expect that sensitive personal information will not be subject to disclosure to others.

¹⁷ Section 121(3) of the IP Act provides that the commissioner must not, in a decision on an external review or in reasons for a decision on an external review, include information that is claimed to be exempt information or contrary to the public interest information.

¹⁸ Schedule 4, part 3, item 3 of the RTI Act.

¹⁹ Schedule 4, part 4, section 6 of the RTI Act.

²⁰ Schedule 4, part 3, item 16 of the RTI Act.

²¹ As per the applicant's written submissions to OIC on 4 August, 30 September and 1 October 2016.

24. In addition, while some of the information in issue is about the applicant, it is so mixed with the personal information of third parties that its disclosure would, in my view, prejudice the third parties' rights to privacy and cause a public interest harm.²²
25. For these reasons, I am satisfied that the factors favouring nondisclosure retain sufficient weight to justify refusal of the information in issue.

Conclusion - balancing the public interest

26. I have weighed up the factors favouring disclosure and nondisclosure of the information in issue. I consider that the public interest in disclosing the information in issue to the applicant is outweighed by the significant public interest harm and prejudice to other people's right to privacy together with the prejudice to the future supply of similar confidential information which could reasonably be expected to occur by disclosure.

DECISION

27. For the reasons set out above, I vary CHHHS' decision and find that disclosure of the information in issue would, on balance, be contrary to the public interest and therefore access to it may be refused under section 67(1) of the IP Act and 47(3)(b) of the RTI Act.
28. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

L Lynch
Assistant Information Commissioner

Date: 6 October 2016

²² Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
8 April 2016	CHHHS received the access application.
14 June 2016	CHHHS issued a notice to the applicant that its decision on the access application on the access application was deemed.
24 June 2016	CHHHS issued its purported decision.
5 July 2016	The applicant applied to OIC for external review. OIC notified CHHHS of its receipt and requested relevant procedural documents.
12 July 2016	OIC received the requested procedural documents from CHHHS.
13 July 2016	OIC requested a copy of the information in issue from CHHHS.
14 July 2016	OIC advised the applicant and CHHHS that the application for external review had been accepted. The applicant advised OIC that he was seeking access to the information in issue and none of the other refused information.
19 July 2016	OIC received a copy of the information in issue from CHHHS.
20 July 2016	OIC telephoned the applicant and conveyed its preliminary view that, having reviewed the information in issue, its disclosure would be contrary to public interest. OIC received submissions from the applicant and advice that he did not accept OIC's preliminary view.
21 July 2016	CHHHS advised OIC that it had sent a copy of the 48 pages to the applicant's nominated healthcare professional.
3 August 2016	OIC wrote to the applicant and confirmed its preliminary view. OIC received further submissions from the applicant and advice confirming that he did not accept OIC's preliminary view.
4 August 2016	OIC received further submissions from the applicant supporting his request to access the information in issue.
17 August 2016	OIC provided the applicant with a written update on the status of the review.
30 September 2016	OIC received further submissions from the applicant supporting his request to access the information in issue.
1 October 2016	The applicant emailed OIC copies of correspondence he exchanged with a third party, for OIC's information.